regardless of whether it shall ultimately be shown that there was a mistake in the boundary. With that modification the rule of *Grube* v. *Wells* has been adopted by a number of courts.

When the mere actual occupancy is insufficient, and it becomes a question of the intention of the occupant, the difficulties are obvious, and the result is that most of the cases are decided upon the application of one of two presumptions. The courts following what we may designate as the Iowa rule apply the presumption that the possession is subordinate to the paper title. *Lecroix* v. *Malone,* 157 Ala. 434; *Barret* v. *Kelley,* 131 Ala. 378; *Williams* v. *Bernstein,* 51 La. Ann. 115; *Edwards* v. *Fleming,* 83 Kans. 653; *Preble* v. *Maine C. R. Co.,* 85 Me. 260; *Kirkman* v. *Brown,* 93 Tenn. 476; *Treece* v. *Am. Assoc.,* 122 Fed. 598 (applying Tennessee law). But the great weight of authority is to the contrary, and the trend of the late decisions is certainly to the effect that the possession, though under a mistake, is presumed to be not subordinate to the real owner. *Johnson* v. *Elder,* 92 Ark. 30; *Searles* v. *De Ladson,* 81 Conn. 133; *O'Flaherty* v. *Mann,* 196 Ill. 304; *Krause* v. *Nolte,* 217 Ill. 298, 3 A. & E. Ann. Cas. 1061; *Dyer* v. *Eldridge,* 136 Ind. 654; *Diers* v. *Ward,* 87 Minn. 475; *Andrews* v. *Hastings,* 85 Neb. 548; *Sommer* v. *Compton,* 52 Ore. 173; *Bruce* v. *Washington,* 80 Tex. 368; *Hesser* v. *Seipman,* 35 Wash. 14; *Cole* v. *Brunt,* 35 U. C. Q. B. 103; *Lucas* v. *Provinces,* 130 Cal. 270; *Milligan* v. *Fritts,* 226 Mo. 189; *Johnson* v. *Thomas,* 23 App. D. C. 141.

Both of these rules being founded upon presumptions, evidence is admissible in practically all cases to rebut the presumption and to show the real nature and extent of the claim of the occupant. *Schaubuch* v. *Dillenmuth,* 108 Va. 86, 60 S. E. 745, is interesting along this line. Often the evidence is such that it is difficult to decide the character of the claimant's possession, whether he is claiming only to the true line, wherever it may be determined to be, or to the disputed boundary at all events, whether correct or not. In *Johnson* v. *Thomas, supra,* an ignorant colored woman became entitled under a certain will to a tract of land, eight acres in extent. She enclosed and occupied for the statutory period eleven acres. In an action for the possession of the three acres she claimed title thereto by adverse possession. The evidence showed that she had said repeatedly that all she wanted and claimed was what the will gave her, but she said that the will gave her the entire tract which she had occupied, and she insisted upon this claim despite the fact that repeated surveys showed her to be wrong. The court held that she was claiming the entire tract of eleven acres whether the line was correct or not. See also along the same line, *Cole* v. *Parker,* 70 Mo. 372. R. W. A.

LIMITATION OF CARRIER'S COMMON-LAW LIABILITY.—The right of a common carrier to limit its common law liability by a special contract with the shipper is recognized in most of the States. What is necessary on the part of the shipper to constitute assent to the special contract is a question on which the courts are divided. The question usually arises in connection with

the use by railroads and express companies of printed contracts, containing limitation clauses which are admittedly binding on the shipper, provided he assents to the contract. Two recent cases show conflicting views of State courts on this point. *St. L. & S. F. R. Co.* v. *Ladd* (Okla. 1912) 124 Pac. 461; *Wichern* v. *United States Express Co.* (N. J. 1912) 83 Atl. 776.

In the former case, plaintiff shipped cattle over defendant's road and accepted a contract limiting the liability of the carrier. Plaintiff executed the contract without reading it or being aware that it contained any limitation, and his attention was not called to this fact by the agent of the carrier. In the latter case, plaintiff delivered a trunk to the defendant company, and received an express contract or receipt in the ordinary form, containing a clause limiting the carrier's liability to fifty dollars unless a higher valuation was shown. In both cases, the question was whether the shipper had assented to the contract so as to be bound by the limitation clause therein. The New Jersey court held, basing its decision on a former case, *Hill* v. *Adams Express Co.*, 78 N. J. L. 333, that the burden of showing an agreement limiting the liability of the carrier rests on the carrier; that to establish such an agreement, the carrier must show that the attention of the shipper was called to the limitation clause in the contract, and that he assented thereto. As no proof of this was offered, it was held that the common law liability attached. The Oklahoma court recognized no such duty on the part of the carrier, but held that by executing the contract, the shipper assented to the limitation clause contained therein, even though it had not been called to his attention and he did not know such a clause was in the contract.

The leading case on this point is *McMillan* v. *M. S. & N. I. R. R. Co.*, 16 Mich. 79, in which COOLEY, J., laid down the rule that the evidence of assent, derived from the acceptance of the contract without objection, is conclusive against the shipper. This view expresses the weight of authority, many courts holding with Michigan that if the shipper accepts the contract, whether he signs it or reads it is immaterial; the mere acceptance raises a conclusive presumption of assent. *Hopkins* v. *Wescott*, 6 Blatch 64; *Mulligan* v. *I. C. Ry. Co.*, 36 Ia. 181; *Ballou* v. *Earle*, 17 R. I. 441. The Illinois court has refused to follow this rule, and in a long line of decisions has held that the limitation of liability must be brought to the shipper's notice, and understood and expressly assented to by him, and that whether he has understood and assented is a question of fact for the jury. *Adams Express Co.* v. *Stettaners*, 61 Ill. 184; *Chicago and Alton Railroad Co.* v. *Davis*, 159 Ill. 53. The Tennessee court (*Dillard Bros.* v. *L. & N. R. R. Co.*, 2 Lea (Tenn.) 288) took a middle ground, holding that the acceptance of the bill of lading or receipt without objection by the shipper raised a *prima facie* presumption that he understood it and assented to its limitation, but that this presumption may be rebutted. The New Jersey supreme court had held this view in two cases, *Florman* v. *Dodd and Childs Express Co.*, 79 N. J. L. 63; *Saunders* v. *Adams Express Co.*, 76 N. J. L. 228, but they were expressly overruled by *Hill* v. *Adams Express Co., supra,* on which the present decision was based.

R. L. M.